

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-85829.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Lease: Noncompetitive Leases

Under 30 U.S.C. | 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure before the issuance of a lease, a noncompetitive lease offer for such lands must be rejected even though the offer was filed before the determination.

2. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

An applicant for a noncompetitive oil and gas lease who challenges a determination that lands are within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is erroneous by a preponderance of the evidence.

APPEARANCES: Carolyn J. McCutchin, pro se; Lowell L. Madsen, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Carolyn J. McCutchin has appealed the July 8, 1985, decision of the Wyoming State Office, Bureau of Land Management (BLM), that rejected her noncompetitive oil and gas lease application W-85829 because the lands involved "were properly classified as KGS [known geological structure] * * * [b]ased upon data submitted by the Rock Springs District Office (copies enclosed)." 1/ The lands are the SW[^] SE[^], sec. 14, T. 19 N., R. 104 W.,

1/ An earlier BLM decision rejecting the offer for the same reason was set aside and remanded because the record did not support the KGS determination. Carolyn J. McCutchin, 86 IBLA 13 (1985).

sixth principal meridian, Sweetwater County, Wyoming, and adjoin the North Baxter Basin KGS on two sides. BLM considers the parcel part of the South Baxter Basin KGS.

The data enclosed with BLM's decision, a May 10, 1985, memorandum from the Rock Springs District Manager to the State Director with three isopach maps for sec. 14, stated that three formations produce gas in the North Baxter field, the Frontier, the Dakota, and the Morrison, and that the presumptively productive reservoir 2/ extends from this field under the lands in question.

The memorandum concludes:

The data indicates [sic] that there is approximately 10' to 13' of presumptively productive reservoir in the Dakota Formation and 2' to 10' in the Morrison Formation. These formations produce gas from various wells in the North Baxter field that contain this thickness of reservoir, as shown by well logs and completion reports (refer to Figures 3 and 4). The presumptively productive reservoir of the Frontier Formation underlies the east half of the parcel, but its 0' to 5' thickness is marginal compared to the other two formations (refer to Figure 2),

Appellant's statement of reasons contends that "[t]he use of words 'vicinity' and 'presumptively' [in the memorandum] is evidence that the person who conducted this analysis is only using 'closeology' and not basing his study on any scientific theories or principals [sic]." The Frontier formation map "indicates zero thickness of the producing horizon," and the 10 "net feet of pay [on the Dakota formation map] is not productive anywhere in the area," appellant argues. "The Morrison Formation is only productive in the area from twenty-one feet of net pay," she continues. In conclusion appellant complains that it

is deceiving for the BLM to collect all of the filing fees for these offerings and without any sound reasoning refuse to issue the lease because of our [sic] obscure and misapplied regulation. This regulation should only come into effect if the BLM has used due diligence in checking the offerings before the lease is offered and money is accepted.

BLM's answer provides additional data about the Frontier formation not available at the time of the preparation of the May 10, 1985, memorandum that "indicate that a thicker reservoir section might be present beneath the parcel." BLM interprets a geologic cross-section accompanying the answer

2/ A "known geological structure" is defined in 43 CFR 3100.0-5(l) as "technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive."

(Figure 4) as showing that three wells in the vicinity of the parcel have three zones in this formation that have been demonstrated to be productive of gas. "Very significant" gas shows were recorded for all three zones from these wells, and the data indicate that zones 2 and 3 of the Frontier formation underlie the parcel in thicknesses of 7 and 5 feet, respectively. In response to appellant's comment concerning the Dakota formation that 10 net feet of pay was not productive anywhere in the area, BLM stated that it was "essentially true if only economic production is considered[,] [h]owever * * * KGS determinations are not based only on the economics of hydrocarbon production." The cross-section of the same three wells (Figure 6) shows one continuous presumptively productive sand zone in the Dakota formation, BLM states, and Figure 5 shows the estimated thickness of the "net effective reservoir" in this formation at these wells in comparison to the thickness of the reservoir at other wells in the area. Finally, for the Morrison formation, BLM's answer states that one well is producing from a 5-foot zone and that this zone is evident for all three wells shown on the cross-section (Figure 8) "and obviously exists beneath the subject parcel."

[1] 30 U.S.C. § 226(b) (1982) ^{3/} provides that if lands subject to leasing "are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding." See 43 CFR 3100.3-1. A noncompetitive lease offer for lands determined to be within a KGS before the lease is issued must be rejected even though the determination was made after the offer was received. 43 CFR 3112.5-2(b); Jack J. Grynberg, 96 IBLA 316, 318 (1987); McDonald v. Clark, 771 F.2d 460 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). Thus, it is not improper for BLM to reject a lease offer, even after the offeror has submitted the necessary fees, if it determines the lands covered by the offer are within a KGS; rather, BLM is required to do so. Kathleen M. Blake, 96 IBLA 61 (1987).

[2] One who challenges BLM's determination that lands are within a KGS must establish by a preponderance of the evidence that the determination is erroneous. Carolyn J. McCutchin, 93 IBLA 134 (1986); Bender v. Clark, 744 F.2d 1424 (10th Cir. 1982). We have reviewed appellant's criticisms of BLM's inclusion of this parcel in the South Baxter Basin KGS and BLM's responses to those criticisms. It is apparent that the appeal is based in part on the misconception that lands must be actually commercially productive, rather than presumptively productive, in order to be classified as within a KGS.

A KGS designation recognizes the existence of a continuous entrapping structure on some part of which there is production.

^{3/} Section 5106(a) of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-259, provides that all noncompetitive oil and gas lease offers and applications (except for some lands not involved in this case) pending on the date of enactment of that Act are to be processed under the provisions of the Mineral Leasing Act of 1920 as it existed before it was amended by that Act.

It does not indicate what is known of the productivity of the lands in a structure, nor does it predict future productivity. A KGS designation of certain land may be made on the basis of drill stem tests, not just completed producing wells, which indicate that a reservoir which extends under such lands is productive.

R. K. O'Connell, 85 IBLA 29, 32 (1985). The data submitted by BLM support its determination that the lands included in appellant's lease offer are within a KGS. Appellant has not met the burden of demonstrating BLM's determination is erroneous.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision is affirmed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

